

RESOLUTION NO. 2016288

RE: AUTHORIZING LOCAL LAW NO. of 2016, A LOCAL LAW
REQUIRING THE PRICING OF GOODS OFFERED FOR SALE AT
RETAIL IN DUTCHESS COUNTY AND REPEALING DUTCHESS
COUNTY LOCAL LAW NO. 9 OF 1991 AS AMENDED BY LOCAL
LAW NO. 5 OF 1994, LOCAL LAW NO. 3 OF 1998, LOCAL LAW NO. 6
OF 2004, AND LOCAL LAW NO. 2 OF 2011

Legislators BORCHERT, MICCIO, SAGLIANO, and LANDISI offer the
following and move its adoption:

RESOLVED, that the Legislature of the County of Dutchess adopt Local Law No.
_____ of 2016 which has been submitted this day for consideration by said Legislature.

CA-146-16
CRC/kvh/G-0992
10/06/16

Fiscal Impact: None

STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with
the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 8th day of December 2016, and that the
same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 8th day of December 2016.

CAROLYN MORRIS, CLERK OF THE LEGISLATURE

RE: LOCAL LAW NO. of 2016, A LOCAL LAW REQUIRING THE PRICING OF GOODS OFFERED FOR SALE AT RETAIL IN DUTCHESS COUNTY AND REPEALING DUTCHESS COUNTY LOCAL LAW NO. 9 OF 1991 AS AMENDED BY LOCAL LAW NO. 5 of 1994, LOCAL LAW NO. 3 of 1998, LOCAL LAW NO. 6 of 2004, and LOCAL LAW NO. 2 of 2011

BE IT ENACTED by the County Legislature of the County of Dutchess as follows:

SECTION 1. LEGISLATIVE INTENT

This Legislature hereby finds and determines that the Consumers in Dutchess County are entitled to clear information, setting forth the prices of consumer commodities which they purchase from retail stores. A clear, easily-enforceable item-pricing statute will promote the Dutchess County consumers' right to all reasonable information in order that these consumers are able to make informed choices about their purchases.

The Legislature also finds and declares that price marking technology utilizing a laser scanning device offers numerous efficiencies and economies to the operation of the retail food industry. The Legislature further finds that price marking constitutes an indispensable ingredient to a consumer's right to all reasonable information in order to make an informed purchase choice.

The Legislature further finds and determines that Computer Assisted Checkout Systems (CACOS) are an accurate means of pricing consumer commodities and have become an indispensable technology for retail stores. Employment of such technology obviates and provides a reasonable alternative to the requirement that individual items be price marked in Arabic numerals, so long as the accuracy of the CACOS system is established and the price of individual items is clearly marked on shelves and displays as provided herein. Other than New York City, Dutchess County is the last jurisdiction in the State to have a mandatory item pricing law without a scanner accuracy waiver provision. This Legislature further finds and determines that there are some retailers which will not operate in counties that mandate manual pricing thus having the effect of limiting competition and economic expansion in Dutchess County. As such, the Legislature finds that other pricing systems should be permitted as an alternative to price marking, subject to proper safeguards.

This Local Law shall not be construed to diminish the requirements of section 214-h of the New York State Agriculture and Markets Law, Section 197-b of the New York State Agriculture and Markets Law, or the New York State Regulations at 1 NYCRR 345.1 et seq. but shall be in addition thereto.

SECTION 2. PRIOR ITEM PRICING LOCAL LAW REPEALED

LOCAL LAW NO. 9 OF 1991 AS AMENDED BY LOCAL LAW NO. 5 of 1994, LOCAL LAW NO. 3 of 1998, LOCAL LAW NO. 6 of 2004, and LOCAL LAW NO. 2 of 2011 of the County of Dutchess, and known as the Dutchess County Item Pricing Law is repealed upon the effective date of this Local Law; provided, however, that nothing, including this Section shall prohibit the enforcement of said Local Law No. 9 of 1991, as amended, of the County of Dutchess, for actions or inactions done or not done as the case may be, by those subject to such Local Law No. 9 of 1991, as amended, of the County of Dutchess, prior to the effective date of this Local Law. All fines, penalties, criminal, and civil liability as the case may be shall remain in full force and effect and available for enforcement under such repealed Local Law No. 9 of

1991, as amended, of the County of Dutchess, for any applicable actions or inaction of those subject to such law as if such law remained in full force and effect for actions taken or inaction prior to the effective date of this Local Law.

SECTION 3. ITEM PRICING REQUIRED

Every retail space in Dutchess County which sells, offers for sale or exposes for sale a consumer commodity shall clearly disclose on each item, the selling price of said consumer commodity. The selling price may be shown by stamp, tag, label, or otherwise, marked in Arabic numeral on each item.

SECTION 4 – EMPLOYMENT OF COMPUTER ASSISTED CHECKOUT SYSTEMS AS SATISFYING THE PROVISIONS OF DUTCHESS COUNTY ITEM PRICING REQUIREMENTS.

Every retail store which uses a computer-assisted checkout system and which would otherwise be required to price mark each item as provided in Section 3 above may make an application, in writing, to the Dutchess County Commissioner of Behavioral and Community Health for a waiver of the item pricing requirement. A separate application shall be required for each qualified retail store.

SECTION 5. DEPARTMENT OF BEHAVIORAL AND COMMUNITY HEALTH, DIVISION OF WEIGHTS AND MEASURES

The responsibility of the administration and enforcement of this Local Law shall be with the Dutchess County Department of Behavioral and Community Health, Division of Weights and Measures. The Commissioner of Behavioral and Community Health shall be vested with the power to promulgate rules and regulations consistent with this Local Law. Item Pricing Rules and Regulations are submitted herewith for adoption by local law.

SECTION 6. SEVERABILITY.

If any clause, sentence, paragraph, subdivision, section or part of this law or application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the cause, sentence, paragraph, subdivision, section or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

SECTION 7. EFFECTIVE DATE.

This Local Law shall take effect upon filing with the Secretary of State.

DUTCHESS COUNTY DEPARTMENT OF BEHAVIORAL AND COMMUNITY HEALTH, DIVISION OF WEIGHTS AND MEASURES, ITEM PRICING RULES AND REGULATIONS

SECTION 1. DEFINITIONS

- (1) **"Retail space"** shall mean a store within a general retail merchandise store selling primarily food at retail for off-premises consumption, provided that such store had annual gross sales in the previous calendar year of at least two million dollars, unless such store is a part of network of subsidiaries, affiliates or other member stores, under direct or indirect common control, which, as a group had annual gross sales in the previous calendar year of at least two million dollars.
- (2) **"Consumer Commodity"** shall mean the following:
 - (a) food, including all material solid, liquid or mixed, whether simple or compounded, used or intended for consumption by human beings, or animals normally kept as household pets, and all substances or ingredients added thereto for any purposes, and, (b) napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper toweling, disposable plates and cups, and, (c) detergents, soaps and other cleansing agents, and (d) non-prescription drugs, female hygiene products and toiletries.
- (3) **"Computer Assisted Check-Out System"** shall mean any electronic device, computer system or a machine which determines the selling price of a consumer commodity by interpreting its universal product code, or an in-house product code, or by use of its prices look-up function.
- (4) **"Inspector"** shall mean an employee of the Dutchess County Division of Weights and Measures, Department of Behavioral and Community Health.
- (5) **"Stock-keeping unit"** means each group of items offered for sale of the same brand, quantity of contents, retail price, and having different colors, flavors, or varieties.
- (6) **"Stock-keeping item"** means each individual item within a stock-keeping unit offered for sale.

SECTION 2. ITEM PRICING REQUIRED

- (a) Every retail space in Dutchess County which sells, offers for sale or exposes for sale a consumer commodity shall clearly disclose on each item, the selling price of said consumer commodity. The selling price may be shown by stamp, tag, label, or otherwise, marked in Arabic numeral on each item.
- (b) The provisions of Section 2(a) hereof shall not apply to the following consumer commodities however packaged or contained, provided the selling price is conspicuously, plainly and clearly state in Arabic numerals by a sign contiguous to the point of display of the commodity:
 - (1) Milk
 - (2) Eggs
 - (3) Loose fresh produce
 - (4) Consumer commodities which are offered for sale in single packages and weighing three ounces or less and are priced under one dollar.
 - (5) Snack good such as cakes, gum candies, chips and nuts offered for sale in single packages and weighing five ounces or less.
 - (6) Food sold for consumption on premises.
 - (7) Identical items within a multi-item package that is properly price marked.

- (8) Products sold through a vending machine.
- (9) Cigarettes, cigars, tobacco and tobacco products.
- (10) Food offered for sale in bulk.

- (c) Every retail space in Dutchess County which accepts manufacturers' coupons is required to post clearly and concisely the establishment's policy with respect to the doubling and/or tripling of coupons in areas easily visible to customers at no less than one entrance to the establishment.

SECTION 3 – EMPLOYMENT OF COMPUTER ASSISTED CHECKOUT SYSTEMS AS SATISFYING THE PROVISIONS OF DUTCHESS COUNTY ITEM PRICING REQUIREMENTS.

A. Every retail store which uses a computer-assisted checkout system and which would otherwise be required to price mark each item as provided in Section 4 above may make an application, in writing, to the Dutchess County Commissioner of Behavioral and Community Health for a waiver of the item pricing requirement. A separate application shall be required for each qualified retail store. Each applicant shall be subject to a non-refundable waiver fee based upon the square footage of the retail area of each store as set according to the following schedule:

1. <u>Store's Square Footage of Retail Area</u>	<u>Waiver Fee</u>
a. 0 to 9,999 sq. ft.	\$ 500.00
b. 10,000 to 29,999 sq. ft.	\$ 1,000.00
c. 30,000 to 49,999 sq. ft.	\$ 3,500.00
d. 50,000 to 89,999 sq. ft.	\$ 5,000.00
e. 90,000 or more sq. ft.	\$ 10,000.00

- 2. Waiver of fees pursuant to this section may hereafter be revised and amended from time to time by resolution of the Dutchess County Legislature.

B. Upon receipt of an application and fee as provided in subsection 1 above of this Section, the Commissioner of Behavioral and Community Health shall conduct a scanner count, location and accuracy inspections of the retail location for which the application has been submitted. At stores with a retail area in excess of 10,000 square feet, a minimum of 100 stock keeping units shall be checked at inspection. At stores with a retail area of 10,000 square feet or less, a minimum of fifty stock keeping units shall be checked. If the number of stock keeping units found to be in violation does not exceed two percent of those stock keeping units inspected, the Commissioner of Behavioral and Community Health shall grant to the applicant a one year revocable waiver for the item pricing requirement.

C. In the event that total violations in excess of two percent are discovered in the inspection process, the Commissioner of Behavioral and Community Health shall not grant a waiver to the applicant. Such a store may, within fifteen business days of being notified of the failure, request a second inspection. If the number of stock keeping units found to be in violation during this second inspection does not exceed two percent of those stock keeping units inspected, the Commissioner of Behavioral and Community Health shall grant to the applicant a one year revocable waiver for the item pricing requirement.

D. Stores whose waivers are revoked pursuant to subsection H or stores which, upon renewal for waiver, fail the scanner accuracy inspection(s) twice must comply with item pricing as set forth in Section 2 above within thirty days from the final date of failure. Such a store will be prohibited from applying for a new waiver for one year from the date of revocation or second inspection failure.

E. Waivers shall be valid for a period of one year from the date of issuance, at which time the waiver shall expire. Stores must reapply annually for renewal. The waiver fee and inspection shall be required for each annual renewal application, as required for an original waiver application.

F. In the event that the Commissioner of Behavioral and Community Health is unable to conduct an inspection within 60 days of receipt of a complete application with the appropriate fee, then the Commissioner of Behavioral and Community Health will issue a temporary waiver pending the completion of the inspection process. The Commissioner of Behavioral and Community Health shall cause an inspection to be completed as soon as practicable. If, upon completion, there is a violation rate of less than two percent, then the Commissioner of Behavioral and Community Health shall issue a permanent waiver with an expiration date of one year from the date of the issuance of the temporary waiver. If, upon completion of an inspection, there is a violation rate in excess of two percent, the temporary waiver shall be immediately revoked. Nevertheless, the store may, within 15 business days of being notified of the failure, request a second inspection. If the number of stock keeping units found to be in violation during this second inspection does not exceed two percent of those stock keeping units inspected, the Commissioner of Behavioral and Community Health shall grant to the applicant a one year revocable waiver for the item pricing requirement from the date of the issuance of the temporary waiver. If the store does not request a second inspection, or if the store fails the second inspection, then the store must comply with the item pricing requirements set forth in Section 2 above.

G. As a condition of the waiver from item pricing, each store must agree to meet all of the following requirements, and no regular or temporary waiver shall be granted to a store which has not agreed to these requirements in writing:

1. The store shall make available price check scanners to enable consumers to confirm the price of stock keeping items. These price check scanners shall be in locations convenient to consumers with signs of sufficient sized lettering to identify the units to the consumers. Stores will submit their proposed sign and device locations to the Commissioner of Behavioral and Community Health for approval. In stores with multiple floors, there shall be at least one scanner conveniently located on each floor of the store. The number of conveniently located scanners shall also be dependent on the store's retail area:

<u>Store's Retail Area:</u>	<u>Scanners:</u>
Under 3,000 sq. ft.	1
Between 3,001 and 10,000 sq. ft.	2
Between 10,001 and 20,000 sq. ft.	3
Between 20,001 and 30,000 sq.ft.	4
Over 30,001 sq. ft.	Minimum of 5 and such additional scanners as the Commissioner may deem appropriate; and

2. Stores must also have a shelf price for each stock keeping item which is visible to the consumer and which are located directly under the item on the shelf on which the item is

displayed; or if the item is not conspicuously visible to the consumer, by a sign or list conspicuously placed at the point of procurement. Failure to display the shelf price for a stock keeping item shall constitute a violation. The Commissioner of Behavioral and Community Health may specify standard shape, typeface, placement and format of shelf prices and may set other requirements to ensure the readability of shelf prices and the ability of consumers to identify which shelf prices applies to each stock keeping item.

3. The store shall not charge any consumer a price for any stock keeping item (SKI) that exceeds the item, shelf, sale or advertised price of the SKI.
4. The store shall make prompt payment to consumers who have been overcharged and shall correct all pricing errors identified by consumers.
5. The store shall post, in a conspicuous place, the refund policy of such retail store in the event of an overcharge.

H. The Commissioner of Behavioral and Community Health may revoke a waiver from item pricing for any of the following reasons:

1. Failure to comply with any provisions of this Local Law;
2. Deliberate overcharging of any consumer;
3. Material misrepresentation in the application for a waiver.

SECTION 4. PENALTIES, INJUNCTIVE RELIEF, SETTLEMENTS

- (a) A violation of any provision of this Local Law or of any rule or regulation promulgated hereunder shall be punishable by the payment of a Civil Penalty in the sum of not more than one hundred dollars for each such violation, with a maximum fine of \$10,000.00 (TEN THOUSAND DOLLARS) per inspection.
- (b) Failure to display the selling price of any stock-keeping unit (SKU) consistent with this act shall be punishable upon proof thereof by payment of a civil penalty in the sum of \$100 per violation per SKU with a maximum fine of \$10,000.00 (TEN THOUSAND DOLLARS) per inspection.
- (c) Whenever any person has engaged in any acts or practices which constitutes repeated or persisted violations of any provision of this Local Law or any rule or regulation promulgated hereunder, the County Attorney, upon the request of the Department of Behavioral and Community Health, Division of Weights and Measures, may commence an action in the name of the County for a restraining order, temporary or permanent injunction or equitable relief.
- (d) On finding a violation of the provisions of this Local Law or the rules and regulations promulgated hereunder, the Dutchess County Department of Behavioral and Community Health, Division of Weights and Measures, shall expeditiously cause the same to be corrected to where there is evidence of intent to defraud refer evidence of such violation to the District Attorney of the County for prosecution or in the absence of intent to defraud refer to the attorney for the municipality for commencement of a civil action, in the name of the municipality, to recover a civil penalty in the amounts prescribed. A cause of action for recovery of such penalty may be released, settled or compromised by the municipality attorney, or, thereafter, by such attorney.

FISCAL IMPACT STATEMENT

☐ NO FISCAL IMPACT PROJECTED

APPROPRIATION RESOLUTIONS

(To be completed by requesting department)

Total Current Year Cost \$ _____

Total Current Year Revenue \$ -10,000
and Source _____

Source of County Funds (check one): ☐ Existing Appropriations, ☐ Contingency,
☐ Transfer of Existing Appropriations, ☐ Additional Appropriations, ☐ Other (explain).

Identify Line Items(s):

Related Expenses: Amount \$ _____

Nature/Reason:

Anticipated Savings to County: _____

Net County Cost (this year): _____

Over Five Years: _____

Additional Comments/Explanation:

The 2017 budget includes revenue associated with the proposed Item Pricing Waiver, in the event that this resolution is not adopted, the Weights and Measures Division of DBCH will continue to fine violators of the item pricing law. The fine revenue is expected to be \$10,000 less than the projected revenue associated with the item pricing waiver.

Prepared by: Rachel Kashimer, Budget Office

Prepared On: 10/17/2016

COUNTY LEGISLATURE

871

September 11, 1991

RESOLUTION NO. 350—1991

RE: Local Law No. 9 of 1991, Requiring the Pricing of Goods Offered for Sale at Retail in Dutchess County and Repealing Local Law No. 9 of 1976, Local Law No. 4 of 1980 and Local Law No. 3 of 1981

Legislators Gamache, Hammond, Horton, Noel, Quinn and Tedone offer the following and move its adoption:

RESOLVED, that this Legislature of the County of Dutchess adopt Local Law No. 9 of 1991 which has been submitted this day for consideration by said Legislature.

Revised 10/1/91 lw

LOCAL LAW NO. 9—1991

A Local Law Requiring the Pricing of Goods Offered for Sale at Retail in Dutchess County and Repealing Local Law No. 9 of 1976, Local Law No. 4 of 1980 and Local Law No. 3 of 1981

BE IT ENACTED by the County Legislature of the County of Dutchess as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that the consumers in Dutchess County are entitled to clear information, setting forth the prices of consumer commodities which they purchase from retail supermarkets. A clear, easily-enforceable item-pricing statute will promote the Dutchess County consumer's right to all reasonable information in order that these consumers are able to make informed choices about their purchases.

The Legislature also finds and declares that there is technology utilizing a laser scanning device offering numerous efficiencies and economies to the operation of the retail food industry. The Legislature further finds that price marking constitutes an indispensable ingredient to a consumer's right to all reasonable information in order to make an informed purchase choice.

The purpose of this Legislation is to require item pricing to protect the interest of the consumer public, and to promote useful technology by permitting continued testing and development of the Universal Product Code Check-Out System without the removal of item prices.

Section 2. Definitions.

- (1) "Retail food establishment" shall mean a store within a general retail merchandise store selling primarily food at retail for off-premises consumption, provided that such store had annual gross sales in the previous calendar year of at least two million dollars, unless such store is a part of a network of subsidiaries, affiliates or other member stores, under direct or indirect common control, which, as a group had annual gross sales in the previous calendar year of at least two million dollars.
- (2) "Consumer commodity" shall mean the following:
 - (a) food, including all material solid, liquid or mixed, whether simple or compounded, used or intended for consumption by human beings or domestic animals normally kept as household pets, and all substances or ingredients added thereto for any purposes, and

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- (b) napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper toweling, disposable plates and cups, and
 - (c) detergents, soaps and other cleansing agents, and
 - (d) non-prescription drugs, female hygiene products and toiletries.
- (3) "Computer-Assisted Check-out System" shall mean any electronic device, computer system or machine which determines the selling price of a consumer commodity by interpreting its universal product code, or by use of its prices look-up function.
- (4) "Inspector" shall mean an employee of the Dutchess County Department of Consumer Affairs.

Section 3. Item Pricing Required

(a) Every retail food establishment in Dutchess County which sells, offers for sale or exposes for sale a consumer commodity shall clearly disclose on each item, the selling price of said consumer commodity. The selling price may be shown by stamp, tag, label or otherwise, marked in arabic numerals on each item.

(b) The provisions of the Section 3 (a) hereof shall not apply to the following consumer commodities however packaged or contained, provided the selling price is conspicuously, plainly and clearly stated in arabic numerals by a sign contiguous to the point of display of the commodity:

- (1) Milk
- (2) Eggs
- (3) Loose fresh produce
- (4) Consumer commodities which are offered for sale in single packages and weighing three ounces or less, and are priced under one dollar.
- (5) Snack foods such as cakes, gum, candies, chips and nuts offered for sale in single packages and weighing five ounces or less.
- (6) Food sold for consumption on premises.
- (7) Identical items within a multi-item package that is properly price marked.
- (8) Products sold through a vending machine.
- (9) Cigarettes, cigars, tobacco and tobacco products.
- (10) Food offered for sale in bulk.

Section 4. Accuracy of Computer Assisted Check-Out Systems.

(a) In a retail food establishment with a computer assisted check-out system, the programmed computer prices for any consumer commodity shall not exceed the item price and/or advertised price, whichever is lower.

(b) In a retail food establishment with a computer assisted check-out system, the inspector shall be permitted to compare the advertised price and/or item price consumer commodity sold in the retail food establishment, with the programmed computer price. The retail food establishment shall provide such access to the computer as is necessary for the inspector to make the determination.

September 11, 1991

(c) (1) Inspection Procedures

For any inspection under this Section, the establishment representative shall afford the inspector access to the test mode of the computer assisted check-out system in use at that establishment or to a comparable function of said system and to the retail price information contained in a price look-up function.

(2) Stop Removal Order

An Inspector shall have the authority to issue a stop removal order with respect to any consumer commodity being used, handled, or offered for sale in violation of this local law. Any such order shall be in writing and direct that the consumer commodity be removed from sale pending correction.

Section 5. Penalties, Injunctive Relief, Settlements.

(a) A violation of any provision of this local law or of any rule or regulation promulgated hereunder shall be punishable, upon proof thereof, by the payment of a civil penalty in the sum of not more than one hundred dollars for each such violation, with a maximum fine of two thousand dollars per inspection.

(b) Whenever any person has engaged in any acts or practices which constitute repeated or persistent violations of any provision of this local law or any rule or regulation promulgated hereunder, the County Attorney, upon the request of the Department of Consumer Affairs, may commence an action in the name of the County for a restraining order, temporary or permanent injunction or equitable relief.

(c) On finding a violation of the provisions of this local law or the rules and regulations promulgated hereunder, the Dutchess County Department of Consumer Affairs shall expeditiously cause the same to be corrected or where there is evidence of intent to defraud refer evidence of such violation to the district attorney of the County for prosecution or in the absence of intent to defraud refer to the attorney for the municipality for commencement of a civil action, in the name of the municipality, to recover a civil penalty in the amounts prescribed. A cause of action for recovery of such penalty may be released, settled or compromised by the municipality director before the matter is referred to the municipal attorney or, thereafter, by such attorney.

Section 6. Consumer Affairs.

The responsibility of the administration and enforcement of this law shall be with the Dutchess County Department of Consumer Affairs. He shall be vested with the power to promulgate rules and regulations consistent with the law.

Section 7. Separability.

If any part of or provisions of this law or the application thereof to any person, entity or circumstances be adjudged invalid by a Court of competent jurisdiction, such judgment shall be confined in its operation to the part of or such provision of or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this law or the application thereof to other persons, entities or circumstances.

Section 8. Jurisdiction.

This local law shall be effective throughout the County of Dutchess.

Section 9. Local Law No. 9 of 1976, Local Law No. 4 of 1980 and Local Law No. 3 of 1981 be and the same are hereby repealed upon the adoption of this local law.

September 11, 1991

Section 10. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that adoption of this law is not an action within the meaning of the State Environmental Quality Review Act and the regulations adopted thereto, because the adoption of this law can have no effect on the environment. See 6 NYCRR Section 617.2(b)(2). The Legislature further finds and determines that even if the adoption of the law is a Type II action, it constitutes a legislative decision in connection with routing or continuing agency administration and management, not including new programs or major reordering of priority. See 6 NYCRR Section 617.13(d)(15) and (21). As a Type II action, the Legislature has no further responsibilities under SEQRA 6 NYCRR Section 617.5(a)(1).

Section 11. Effective Date.

This law shall take effect upon filing with the Secretary of State.

The foregoing resolution (#350) was laid on the desks at this meeting.

It was considered at a regular meeting of the Legislature on October 15, 1995.

Roll call vote on the foregoing local law at that time resulted as follows:

Ayes: 34

Nays: 0

Absent: 1—Lavole.

Resolution adopted.

The County Executive held a public hearing on the foregoing local law on November 1, 1991 and signed it on the same day.

The effective date of this local law is November 1, 1991.

On motion by Legislator Smith, duly seconded by Legislator Phillips, and carried, the Rules were suspended to allow the public to address non-agenda items.

On motion by Legislator Phillips, duly seconded by Legislator Smith, and carried, the Regular Order of Business was resumed.

There being no further business, upon motion of Legislator Smith, duly seconded by Legislator Bleakley and carried, the meeting adjourned at 6:10 PM subject to the call of the Chair.

Lay on Decks
8-8
Chart & L
Govt Svs
9-12
2

RESOLUTION NO. 248 OF 1994


RE: LOCAL LAW NO. 5 OF 1994, AMENDING LOCAL
LAW NO. 9 OF 1991 REQUIRING THE PRICING OF GOODS
OFFERED FOR SALE AT RETAIL IN DUTCHESS COUNTY

Legislators Fettes, Hammond, Mark, Noel, Phillips, Quinn,
Smith and Tedone offer the following and move its adoption:

RESOLVED, that this Legislature of the County of Dutchess
adopt Local Law No. 5 of 1994 which has been submitted this day
for consideration by said Legislature.

CA-124-94
CRC/ekb
7/11/94

APPROVED


WILLIAM R. STEINHAUS
COUNTY EXECUTIVE

Date October 3, 1994

STATE OF NEW YORK
COUNTY OF DUTCHESS

ss:

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 12 day of September 19 94, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 12 day of September 1994

BR-3


CLERK OF THE LEGISLATURE

A LOCAL LAW AMENDING LOCAL LAW NO. 9 OF 1991

BE IT ENACTED by the County Legislature of the County of Dutchess, State of New York, as follows:

SECTION 1. Legislative Finding. The Dutchess County Legislature hereby determines that it is appropriate and necessary to amend Local Law No. 9 of 1991 to (1) include food "warehouse" type facilities in the definition of Retail Food Establishments and (2) to relieve businesses of the unobtainable goal of One Hundred (100%) percent Item Pricing by allowing for a small number of unmarked items before a violation exists.

SECTION 2. Section 2(1) of Local Law No. 9 of 1991 is hereby amended to read as follows:

1. "Retail food establishment" shall mean a store within a general retail merchandise store selling more than 30% food at retail for off-premises consumption, provided that such store had annual gross sales in the previous calendar year of at least two million dollars, unless such store is a part of a network of subsidiaries, affiliates or other member stores, under direct or indirect common control, which, as a group had annual gross sales in the previous calendar year of at least two million dollars.

SECTION 3. Section 2 of Local Law No. 9 of 1991 is hereby amended to add thereto the following new subdivisions (5) and (6):

- (5) "Stock keeping unit" shall mean each group of items offered for sale of the same brand name, quantity of contents and retail price.
- (6) "Stock keeping item" shall mean each item of stock keeping unit offered for sale.

SECTION 4. Section 5(a) of Local Law No. 9 of 1991 is hereby amended to read as follows:

- (a) A violation of any provision of this local law or of any rules or regulation promulgated hereunder shall be punishable, upon proof thereof, by the payment of a civil penalty in the sum of not more than one hundred dollars for each such violation, with a maximum fine of two thousand dollars per inspection. No penalties shall be imposed, however, for a violation of Section 3(a) if more than 97% percent of all the stock keeping items inspected in each stock keeping unit at an individual point of sale contain clearly readable item prices.

SECTION 5. This Local Law shall take effect immediately upon full compliance with all requisite statutes and laws applicable to its adoption and promulgation.

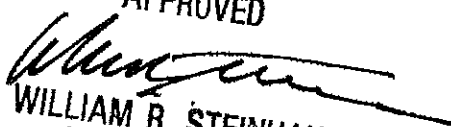
Lay on Desks
4-20-98
Charter: LL

RESOLUTION NO. 980193

RE: LOCAL LAW NO. 3 OF 1998, A LOCAL LAW AMENDING LOCAL
LAW NO. 9 OF 1991 REQUIRING ITEMIZED PRICING OF GOODS
OFFERED FOR SALE AT RETAIL

Legislator SEARS offers the following and moves its
adoption:

RESOLVED, that this Legislature of the County of Dutchess
adopt Local Law No. 3 of 1998, which has been submitted this day
for consideration by said Legislature.

APPROVED

WILLIAM R. STEINHAUS
COUNTY EXECUTIVE
Date 5/27, 1998

A:RES. Local Law No. 1 3/27/98 js

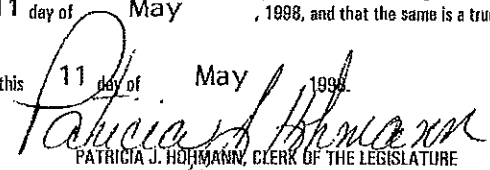
STATE OF NEW YORK

ss:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution
now on file in the office of said clerk, and which was adopted by said Legislature on the 11 day of May, 1998, and that the same is a true and
correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 11 day of May, 1998.


PATRICIA J. HOHMANN, CLERK OF THE LEGISLATURE

LOCAL LAW NO. 3 OF 1998

RE: A LOCAL LAW AMENDING LOCAL LAW NO. 9 OF 1991
REQUIRING ITEMIZED PRICING OF GOODS OFFERED FOR SALE AT
RETAIL

BE IT ENACTED by the County Legislature of the County of
Dutchess as follows:

SECTION 1. LEGISLATIVE INTENT.

The intent of this local law shall be to amend Section 3 of
Local Law No. 9 of 1991 as follows:

SECTION 3. ITEM PRICING REQUIRED.

(A) Every retail food establishment in Dutchess County
which sells, offers for sale or exposes for sale a consumer
commodity shall clearly disclose on each item, the selling price
of said consumer commodity. The selling price may be shown by
stamp, tag, label, or otherwise marked in Arabic numerals on each
item.

(A) (1) The provisions of Section 3 (A) hereof
shall not apply to the following consumer commodities however
packaged or contained, provided the selling price is
conspicuously, plainly and clearly stated in Arabic numerals by a
sign contiguous to the point of display of the commodity:

- (1) Milk
- (2) Eggs
- (3) Loose fresh produce
- (4) Consumer commodities which are offered for sale in
single packages and weighing three ounces or
less, and are priced under one dollar.
- (5) Snack foods such as cakes, gum, candies, chips
and nuts offered for sale in single packages and
weighing five ounces or less.
- (6) Food sold for consumption on premises.
- (7) Identical items within a multi-item package that
is properly marked.

- (8) Products sold through a vending machine.
- (9) Cigarettes, cigars, tobacco, and tobacco products.
- (10) Food offered for sale in bulk.

(B) Every retail food establishment in Dutchess County which accepts manufacturers' coupons is required to post clearly and concisely the establishment's policy with respect to the doubling and/or tripling of coupons in areas easily visible to customers at all entrances to the establishment.

SECTION 2. EFFECTIVE DATE.

This local law shall take effect immediately upon full compliance with all the requisite statutes and laws applicable to its adoption and promulgation.

Government Services & Administration

Lay on Desks 6/14/04

Revised 7/9/2004 3:20 PM

Relay on Desks 7/12/04

Revised 8/26/04 10:30 AM

Relay on Desks 9/13/04

Revised 10/13/2004 2:35 PM

Relay on Desks 10/13/04

Revised 11/8/04 2:13 PM

Relay on Desks 11/8/04

RESOLUTION NO. 204206

RE: LOCAL LAW NO. 6 OF 2004, AMENDING LOCAL LAW NO. 9 OF 1991 AS AMENDED BY LOCAL LAW NO. 3 OF 1998, REQUIRING ITEMIZED PRICING OF GOODS OFFERED FOR SALE AT RETAIL IN DUTCHESS COUNTY

Legislators SEARS, McCabe, Keller-Coffey, Horton, and Fettes offer the following and move its adoption:

RESOLVED, that this Legislature of the County of Dutchess adopt Local Law No. 6 of 2004, which has been submitted this day for consideration by said Legislature.

APPROVED


WILLIAM R. STEINHAUS
COUNTY EXECUTIVE

STATE OF NEW YORK

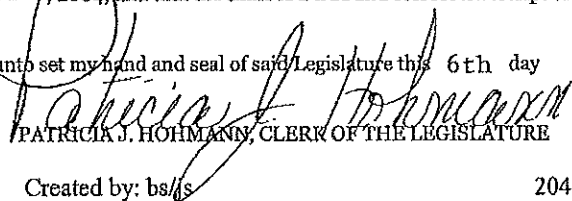
ss:

COUNTY OF DUTCHESS

Date 12/28, 2004

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 6th day of December, 2004, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 6th day of December, 2004.


PATRICIA J. HOHMANN, CLERK OF THE LEGISLATURE

Created on: 5/5/04

Revised 7/9/04 bs/js

Revised 8/26/04 bs/lw

Revised 10/13/04 sv:js

Revised 11/8/04 bs:js

Created by: bs/js

Page 1 of 2

204206.doc

LOCAL LAW NO. 6 OF 2004

RE: AMENDING LOCAL LAW NO. 9 OF 1991 AS AMENDED BY LOCAL
LAW NO. 3 OF 1998, REQUIRING ITEMIZED PRICING OF GOODS
OFFERED FOR SALE AT RETAIL IN DUTCHESS COUNTY

BE IT ENACTED by the County Legislature of the County of
Dutchess as follows:

SECTION 1: Section 5 (a) of Local Law No. 9 of 1991 is hereby amended as
follows:

5 (a) A violation of any provision of this local law or of any rule or
regulation promulgated hereunder shall be punishable, upon proof thereof, by the
payment of a civil penalty in the sum of not more than one hundred dollars for each such
violation, with a maximum fine of seven thousand five hundred dollars per inspection.

SECTION 2: EFFECTIVE DATE:

This Local Law shall take effect upon the proper filing with the Secretary of
State.



Dutchess
County
Executive

Dutchess

William R. Steinhaus
County Executive

MEMORANDUM

22 Market Street
Poughkeepsie
New York
12601
(845) 486-2000
Fax (845) 486-2021

TO: Bradford Kendall, Chairman, Dutchess County Legislature

FROM: William R. Steinhaus, Dutchess County Executive *WR*

RR: Item Pricing

DATE: July 7, 2004

Thank you for your June 17, 2004 response to my letter dated June 10, 2004 (both attached). With regard to the fee schedule, we recommended a fee based on square footage because we believe it is more equitable to the smaller stores. Since operational savings to the store increases with the stores size, this recommendation links realized operational savings by the store with the ability to remit a higher fee.

With respect to staffing, the current Office of Consumer Affairs inspection staff is limited to a working supervisor and two inspection positions. During this very difficult and trying budgetary environment, it may not be possible to add a staff position at a new additional cost to the taxpayer. Therefore, the fee schedule we recommended will recoup the cost of adding an additional inspector in 2005. It is my belief any new revenue must be sufficient to offset the new salary and benefits and be in addition to the current fine revenue that currently offsets the department's impact on the tax levy. Absent the ability to fund a new position the department is unable to accept any new responsibilities. While we feel the graduated fee is better, the additional revenue could be generated by increasing the flat per store fee to \$2,500--\$3,000.

We have also recommended a graduated fine schedule based on the number of violations to a maximum fine to \$10,000. Unfortunately past experience has shown there are stores that would rather pay a fine as a cost of doing business than comply with the law. We believe a maximum fine of \$10,000 for each subsequent violation is the only way to effectively discourage that practice.

Lastly, you indicate government should not maintain needless regulations to generate employment. I do not disagree. However, I still have not heard an explanation on how the stores are going to generate the significant savings without personnel reductions. If the industry maintains this change will not lead to lost jobs, there should be some forethought now by the sponsors to hold stores accountable in the amendment and protect employees of working families that depend on their income.



Dutchess County Legislature

Bradford Kendall
Chairman

22 Market Street, Poughkeepsie, NY 12601
Telephone: 845-486-2100 Fax 845-486-2113

MEMORANDUM

TO: William Steinhaus, County Executive
FROM: Bradford Kendall, Chairman of the Legislature
RE: Item Pricing
DATE: June 17, 2004

2004 JUN 17 PM 3:33

DUTCHESS COUNTY
LEGISLATURE
RECEIVED

Thank you for sharing your concerns with me regarding item pricing.

I have read your memo and wanted to take this opportunity to respond and share some of my thoughts and comments relating to three areas you mentioned in your memo.

Application Fee

While for a time an application fee structure based on square footage was considered, it was decided to propose a flat fee of \$2,000 per store. Several factors were considered in favor of the flat fee provision. Of the fourteen counties, which have an item pricing law, seven provide a waiver option. Of these, most if not all charge a flat fee; none to my knowledge base the fee on the size of the store.

We have been told that enforcing a fee based on the size of a store would result in difficulty in determining the actual square footage, and an administrative burden on the Office of Consumer Affairs. We have also been told that a flat fee schedule has not resulted in any problems where it is used. Schenectady County, which has had the waiver option for three years, specifically urged us to consider the flat fee approach.

Fines

The current maximum fine is \$2,000. Fines collected in recent years have been \$28,500 in 2002, \$24,500 in 2003, and \$18,500 as of March 31, 2004. We agree that the maximum fine should be increased. We propose a maximum of \$5,000. The Director, under the proposed provision could collect up to \$5,000 for each violation, even for the initial violation, if he/she determines. The Director should be given flexibility in administering fines.

Loss of jobs

Indeed, and of course the matter of jobs has been considered. This was a matter considered early and seriously by the sponsors. There has been no evidence in counties, which provide a waiver option, that jobs have been lost. This is according to the Food Merchants Association, as you mentioned in your memo, but also by the Food Industry Alliance of New York State, the management of several area supermarket chains, and from the Directors of several county consumer protection agencies.

It has been reported to us that rather than laying people off, employees have been reassigned to more meaningful customer oriented responsibilities, or moved to a more desirable shift. A dialogue with Local 1500 of the UFCW, which has organized six stores in Dutchess County, has been opened. The UFCW may oppose this proposal, but there has been no evidence received which indicates a serious problem of any jobs lost.

However, I do not believe it is not the role of government to maintain needless regulations to generate employment.

In order to address your concerns about sufficient staffing and revenue at the Office of Consumer Affairs, we have postponed the effective date to January 1, 2005. This will allow the Legislature and the County Executive's Office to address concerns during the adoption of the 2005-operating budget.

Thank you again for your input. I look forward to working with you and your office as we move forward.



Dutchess
County
Executive

Dutchess

William R. Steinhaus
County Executive

22 Market Street
Poughkeepsie
New York
12601
(845) 486-2000
Fax (845) 486-2021

MEMORANDUM

TO: Bradford Kendall, Chairman of the Legislature

FROM: William R. Steinhaus, county Executive *WR*

RE: Item Pricing

DATE: June 10, 2004

Thank you for forwarding the proposed Item Pricing resolution for our review and comment.

I have had an opportunity to review the proposed amendment to the *Item Pricing Law* with senior staff and Nelson Kranker, the County's Director of Consumer Affairs.

A few changes have been recommended to me which I believe will enhance the law and the operation of the County's Consumers Affairs Department to better serve our residents.

One of the issues I would like you to consider is inadequate staffing in the department. The department has not added inspection staffing since 1973. Since that time, however, the staff has assumed substantially greater responsibilities including:

- Unfair and Deceptive Trade Practices Law
- enforcement duties pertaining to Consumer Affairs and weights and measures in the Cities of Poughkeepsie and Beacon
- the recent decision to provide local oversight to the D.E.C. retail petroleum storage tank regulation-
- additional workload due to increased population and commerce in the county
- community education and presentations

We have been successful at increasing efficiency through technology allowing the department to keep pace with the increasing work load of the office, but we are past the limit of our capacity to keep pace. Of particular note to the Legislature is that Dutchess County has the lowest per capita staffing in our region.

During these stressful times on the county budget and tax levy, the timing of this amendment to the current law allows the county a unique opportunity to keep pace

with our increasing responsibilities and workload. Additionally, we could better serve a growing population by increasing the frequency of inspections through additional staff opportunities without an additional impact on the budget. This would offer us a real value added impact I feel might be important to many Legislators who are consumer advocates.

After discussion with Mr. Kranker it is suggested the fee schedule be increased to establish a revenue stream for additional staffing in the 2005 budget. Nelson has indicated the savings to supermarkets range between \$50,000 up to \$ 120,000 per store if the current *Item Pricing Law* is amended as suggested. I am told these are not small mom and pop stores. By the department's count it would affect 28 stores, with the exception of Adams, Tiberio's IGA, Price Chopper and Food Town the remaining stores are headquartered out of state and the country. Therefore, the Director has proposed a fee schedule that is reasonable in the context of the dramatic monetary savings these stores would continue to enjoy under the proposed amendment to the current local law. At the same time however, we could fund an additional position to monitor and enforce unfair consumer practices. The \$ 50,000 in revenue generated by this fee schedule would support an additional position in 2005. The suggested fee schedule is based on a stores square footage and is listed below:

0 to 10,000 sq. ft.	\$1,250
10,000 to 29,999 sq. ft.	\$2,250
30,000 to 99,999 sq. ft.	\$3,250
100,000 or more	\$4,250

The Director also recommends the fine structure needs to be large enough to discourage a store from paying a fine because it is less expensive than following the regulation. I hope Legislators would agree we need to discourage large corporations from flaunting the law because the penalty is not more progressive with each violation. Therefore, it is recommended the fine structure be increased on a graduated scale to a maximum of \$10,000 as follows:

1st violation = \$1,000
2nd violation = \$3,000
3^d violation = \$5,000
4th violation = \$7,500
5th violation = \$10,000

I would like to address one final point. I am concerned the implementation of this amendment could result in the loss of jobs to individuals or people from working families who may not have the skills or ability to find other work. According to the Food Merchant's Association, there would be no job losses. I would like to have a better understanding of how the savings per store are realized without an impact on current employment levels. Have the sponsors and advocates of this amendment

pursued this issue in depth to determine whether or not the passage of this amendment will in fact have no impact on jobs?

I hope you and the supporters of this amendment will give full consideration to implementing these important suggestions, we believe will provide better service to the residents served by the Department of Consumer Affairs. I would like to be able to support you on this initiative but I want you to know in advance I feel the above amendments are important.

Cc: All Legislators

Charles North, President, Poughkeepsie Chamber

Beth Coleman, President, Southern Dutchess Chamber

Keryl Pesce, Chair, Poughkeepsie Chamber

Brian G. Morgan, Esq., Poughkeepsie Chamber Legislative Action Committee

Government Services
Laid on Desks 11/4/10
Revised and Re-Laid by Mail 11/22/10

RESOLUTION NO. 2010347

RE: LOCAL LAW NO. 27 OF 2011, A LOCAL LAW AMENDING
THE DUTCHESS COUNTY CHARTER BY DELETING SECTION
30.11 (DIRECTOR OF WEIGHTS AND MEASURES III) AND
TRANSFERRING ALL POWERS AND DUTIES SET FORTH
THEREIN TO THE DEPARTMENT OF HEALTH

Legislators ROLISON, COOPER, and BORCHERT offer the following and move
its adoption:

RESOLVED, that the Legislature of the County of Dutchess adopt Local Law No.
2 of 2011 which has been submitted this day for consideration by said Legislature.

CA-210-10
CAB/ca/G-1524
10/28/10 (revised 11/10/10)

Fiscal Impact: None

APPROVED



WILLIAM R. STEINHAUS
COUNTY EXECUTIVE

Date 12/20, 2010

STATE OF NEW YORK

SS:

COUNTY OF DUTCHESS

This is to certify that I, the undersigned Clerk of the Legislature of the County of Dutchess have compared the foregoing resolution with the original resolution now on file in the office of said clerk, and which was adopted by said Legislature on the 7th day of December, and that the same is a true and correct transcript of said original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Legislature this 7th day of December 2010.



PATRICIA J. HOHMANN, CLERK OF THE LEGISLATURE

LOCAL LAW NO. 2 of 2011

RE: A LOCAL LAW AMENDING THE DUTCHESS COUNTY CHARTER
BY DELETING SECTION 30.11 (DIRECTOR OF WEIGHTS AND
MEASURES III) AND TRANSFERRING ALL POWERS AND DUTIES
SET FORTH THEREIN TO THE DEPARTMENT OF HEALTH

BE IT ENACTED by the County Legislature of the County of Dutchess, State of New York as follows:

SECTION 1. LEGISLATIVE INTENT. In order to accomplish the unification of services set forth herein and to assure that those services are provided to the residents of Dutchess County in an efficient and cost effective manner, the Legislature hereby deletes Section 30.11 from the Dutchess County Charter and transfers the responsibilities previously set forth therein and described in Section 2 below to the Department of Health.

SECTION 2. Article VII (Department of Health) of the Dutchess County Charter is amended to add Section 7.06 which shall read as follows:

Section 7.06. Director of Weights and Measures III. Within the Department of Health, there shall be a Director of Weights and Measures III who shall have the powers and duties of a county director of weights and measures as described in Article 16 of the New York State Agriculture and Markets Law. The Director shall also perform such other and related duties as required by the Commissioner of Health provided such additional powers and duties deal primarily with services designed to aid and protect the consumer and are not inconsistent with the provisions of Article 16 of the New York State Agricultural and Markets Law.

SECTION 3. Local Law No. 2 of 1983 is hereby repealed.

SECTION 4. Any and all references to the "Dutchess County Department of Consumer Affairs" or "Director of Consumer Affairs and Weights and Measures" made in all Dutchess County local laws previously adopted affecting the Dutchess County Department of Consumer Affairs and the Director of Consumer Affairs and Weights and Measures including, but not limited to Local Law No. 2 of 1986, Local Law No. 8 of 1987, Local Law No. 9 of 1991, Local Law No. 10 of 1991, Local Law No. 5 of 1994, Local Law No. 6 of 1994, Local Law No. 5 of 1997, Local Law No. 3 of 1998 and Local Law No. 6 of 2004 shall now and henceforth refer to the Dutchess County Department of Health and the Dutchess County Commissioner of Health, respectively.

SECTION 5. EFFECTIVE DATE. This local law shall take effect immediately upon full compliance with all the requisite statutes and laws applicable to its adoption and promulgation.

DUTCHESS COUNTY ATTORNEY'S OFFICE

County Office Building
22 Market Street
Poughkeepsie, New York 12601
Tel. (845) 486-2110
Fax (845) 486-2002

MEMORANDUM:

TO: Robert Rolison, Chairman, Dutchess County Legislature
FROM: James M. Fedorchak, County Attorney *JMF*
DATE: November 22, 2010
SUBJECT: Revised Sealer of Weights and Measurers Local Law
Our File No. G-1524

I am forwarding to you for distribution to the members of the Dutchess County Legislature a revised Local Law affecting the unification of the Sealer of Weights and Measurers with the Department of Health.

This revised Local Law is the product of our continued research regarding all of the local laws enacted by the County of Dutchess which affect the responsibilities of the Sealer or Weights and Measurers and issues concerning consumer protection. Following the delivery of the initial Local Law to you, we discovered several Local Laws which address consumer protection and needed to be amended to reflect the fact that the responsibilities under the proposed Local Law would fall within the Department of Health under the direction of the Commissioner of Health.

All of the Local Laws previously enacted are referenced in Section 4 of the proposed Local Law.

Pursuant to the Rules of the Legislature, I trust that you will have the revised Local Law mailed to the members of the Dutchess County Legislature in conformance with Section 20(4) of the Municipal Home Rule Law which requires that such mailing be done in a post paid properly addressed and securely closed envelope or wrapper at least ten calendar days, exclusive of Sunday, prior to the final passage of the Law. I note that the original Law was to be brought before the Legislature as part of the budget consideration on December 7, 2010 which means that the revised Law should be mailed no later than November 24, 2010.

If you have any questions with regard to this request, kindly feel free to contact me at your convenience. Thank you.

McKinney's Consolidated Laws of New York Annotated Agriculture and Markets Law (Refs & Annos) Chapter 69. Of the Consolidated Laws Article 17. Adulteration, Packing, and Branding of Food and Food Products (Refs & Annos)

McKinney's Agriculture and Markets Law § 214-h

§ 214-h. Unit pricing

Effective: February 13, 2013

Currentness

1. Consumer information required. Each person who sells, offers or exposes for sale in a retail store a consumer commodity shall disclose to the consumer the unit price and the total price of the commodity as provided in this section.

2. Definitions. a. "Consumer commodities" shall mean the following, however packaged or contained:

(1) food, including all material, solid, liquid or mixed, whether simple or compound, used or intended for consumption by human beings or domestic animals normally kept as household pets and all substances or ingredients to be added thereto for any purpose; and

(2) napkins, facial tissues, toilet tissues, foil wrapping, plastic wrapping, paper toweling, disposable plates; and

(3) detergents, soaps and other cleansing agents; and

(4) non-prescription drugs, female hygiene products and toiletries.

b. "Retail store" shall mean a store which sells consumer commodities at retail, which store is not primarily engaged in the sale of food for consumption on the premises, or which is not primarily engaged in a specialty trade which the commissioner determines, by regulation, would be inappropriate for unit pricing. An establishment which sells consumer commodities only to its members shall be deemed to be included within this definition unless the members must pay a direct fee to qualify for membership and the establishment is not required to collect sales tax on transactions with members, pursuant to article twenty-eight of the tax law.

c. "Unit price" of a consumer commodity shall mean the price per measure.

d. "Price per measure" shall mean:

(1) price per pound for commodities whose net quantity is expressed in units of weight, except for such commodities whose net weight is less than one ounce which shall be expressed as price per ounce and commodities in powdered form which purport to be or are represented for special dietary use solely as a food for infants by reason of its simulation

of human milk or suitability as a complete or partial substitute for human milk which shall be expressed as price per reconstituted fluid ounce; provided that the same unit of measure is used for the same commodity in all sizes;

(2) price per pint or quart for commodities whose net quantity is stated in fluid ounces, pints, quarts or gallons or a combination thereof, except for such commodities in concentrated liquid or ready to feed form which purport to be or are represented for special dietary use solely as a food for infants by reason of its simulation of human milk or suitability as a complete or partial substitute for human milk which shall be expressed as price per reconstituted fluid ounce for commodities in concentrated liquid form and price per fluid ounce for commodities in ready to feed form; provided that the same unit of measure is used for the same commodity in all sizes sold in the retail establishment;

(3) price per one hundred for commodities whose net quantity is expressed by count, except as otherwise provided by regulation;

(4) price per foot for commodities whose net quantity is stated in units of length, except for such commodities whose net quantity exceeds one hundred feet, which shall be expressed as price per one hundred feet, and the "ply" count, if any, provided that the same unit of measure is used for the same commodity in all sizes;

(5) price per square foot or square yard, as appropriate, for commodities whose net quantity is expressed in units of area and the "ply" count, if any, provided that the same unit of measure is used for the same commodity in all sizes; or

(6) such other price per measure, including metric equivalents of the customary measures, as the commissioner shall by regulation permit. The commissioner shall establish such metric equivalents whenever he determines that any commodity subject to the provisions of this section is being sold, offered or exposed for sale by metric measure.

3. Exemptions. a. The provisions of this section shall not apply to the following consumer commodities:

(1) food sold for consumption on the premises;

(2) prepackaged food containing separate and identifiable kinds of food segregated by physical division within the package; and any other foods for which the commissioner determines, by rules and regulation, that unit pricing would not be meaningful;

(3) any food which is primarily or exclusively a gourmet or specialty food, provided that the commissioner determines by regulation that unit pricing would be impractical for such food, and provided further that such food is segregated and displayed as a gourmet or specialty food;

(4) any commodity whose net quantity as offered for sale is one pound, one ounce, one pint or quart, one hundred count, one foot, one hundred feet, one square foot, one square yard or equivalent metric units established by the commissioner, provided that it has the retail price marked plainly thereon;

(5) milk, and other similar low fat products such as two percent milk, one percent milk and skim milk, cream, mellorecream and vegetable oil blend whose net quantity as offered for sale is one half pint, one pint, one quart, one half gallon, one gallon, one half liter, one liter; frozen desserts such as ice cream, light ice cream, low-fat ice cream, fat-free ice cream, sherbet, sorbet, frozen yogurt, and any other product similar in appearance, odor and taste to such products whose net quantity as offered for sale is one half pint, one pint, one quart, one half gallon, one gallon, and multiples of quarts and gallons; and butter, vegetable spread, oleo margarine and margarine whose net quantity is one fourth pound, one half pound, one pound or multiples of one pound, one hundred twenty-five grams, two hundred fifty grams, five hundred grams or multiples of five hundred grams, flour whose net quantity as offered for sale is in five or ten pound bags;

(6) fresh food produce.

b. The provisions of this section shall not apply to convenience stores which include small stores which typically sell motor fuel, tobacco products, fast food and beverages and do not offer sufficient quantity of consumer commodities to make unit pricing useful to consumers or to any retail store having had annual gross sales of consumer commodities in the previous calendar year of less than two and one-half million dollars, unless the store is a part of a network of subsidiaries, affiliates or other member stores, under direct or indirect common control, with five or more stores located in New York, which, as a group, had annual gross sales the previous calendar year of two and one-half million dollars or more of consumer commodities.

4. Means of disclosure. A consumer commodity sold, or offered for sale or exposed for sale, subject to this section, shall have the unit price and total price disclosed to the consumer in one of the following ways:

a. if the item is conspicuously visible to the consumer, by the attachment of a stamp, tag or label directly under the item on the shelf on which the item is displayed, or, in the case of refrigerated items not displayed on shelves, in a manner to be prescribed by regulation; or

b. if the item is not conspicuously visible to the consumer, by a sign or list conspicuously placed near the point of procurement, or by affixing the unit price and total price on the commodity itself.

5. The commissioner may promulgate regulations to effectuate this section.

6. Nothing in this section shall be construed to conflict with or limit section one hundred ninety of this chapter.

7. Violations and penalties. a. A violation of this section shall be subject to the applicable penalties of this chapter except for the penalties specified in section forty-one thereof.

For purposes of this section, each group of identical consumer commodities for which on any single day the total selling price or price per measure is not displayed in accordance with this section or the regulations promulgated thereunder shall be considered a violation of this section. Improper unit pricing caused by nonintentional technical errors, however, shall not constitute a violation.

- b. Each group of units not unit priced or improperly unit priced shall constitute a violation. Each individual unit, however, not unit priced or improperly unit priced shall not constitute a violation unless displayed alone.
 - c. Each day a violation is continued shall constitute a separate violation.
 - d. The provisions of this section and the regulations promulgated hereunder may be enforced concurrently by the director of a municipal consumer affairs office or a municipal director of weights and measures.
8. Preemption. Except as provided in paragraph b of subdivision three of this section, any local law, ordinance, rule or regulation relating to labeling, displaying or other disclosure of the price per measure of any commodity must be consistent with the provisions of this section and the rules and regulations adopted hereunder.

Credits

(Added L.1977, c. 874, § 3. Amended L.1979, c. 679, § 1; L.1981, c. 201, § 1; L.1993, c. 323, §§ 1, 2; L.1995, c. 273, §§ 1, 2; L.1997, c. 306, § 2, eff. July 29, 1997; L.2012, c. 427, § 1, eff. Feb. 13, 2013.)

McKinney's Agriculture and Markets Law § 214-h, NY AGRI & MKTS § 214-h
Current through L.2016, chapters 1 to 442.

McKinney's Consolidated Laws of New York Annotated
Agriculture and Markets Law (Refs & Annos)
Chapter 69. Of the Consolidated Laws
Article 16. Weights and Measures (Refs & Annos)

McKinney's Agriculture and Markets Law § 197-b

§ 197-b. Retail pricing accuracy

Effective: September 13, 2006

Currentness

1. Definitions. a. "Retail store" shall mean a store that sells stock-keeping units directly to consumers and charges or is liable for the collection of sales tax. For the purposes of this section the term "retail store" shall include those stores that use universal product code (UPC) scanners or price-look-up (PLU) codes in checkout systems or use manual pricing of items.

b. "Pricing accuracy inspection" shall mean an inspection of a retail store for the purpose of ensuring that customers are charged the correct price for the items they purchase.

c. "Price charged" means the price a customer is charged for an item. For prices determined by an automated checkout device, the price charged means the price on the receipt issued to the consumer after the final total has been determined, whether the item is scanned or actually purchased, the device is computing or recording while in training mode, or by using a hand-held device connected to a store's database.

d. "Stock-keeping unit" means each group of items offered for sale of the same brand, quantity of contents, retail price, and having different colors, flavors, or varieties.

e. "Retail price" means the lowest advertised, written, posted, or marked price of a stock-keeping unit.

f. "Overcharge" means a price charged that is higher than the retail price.

g. "Undercharge" means a price charged that is lower than the retail price.

h. "Large overcharge" means an error of twenty-five cents on any individual item up to two dollars and fifty cents and ten percent thereafter.

2. Pricing requirements. A retail store shall:

a. Display the retail price of each stock-keeping unit offered for sale, either on each unit or on easy to read shelf tags, or signs, located directly above or below or immediately adjacent to every stock-keeping unit or group of stock-keeping units of the same brand, size and price.

b. Assure that the price charged after the final total has been determined is equivalent to the retail price.

c. If a UPC scanner system is used to determine the price charged, provide the appropriate inspection official access to the checkout system in use at such retail store to verify the price charged for items included in a pricing accuracy inspection. Access shall be provided to the system either in normal operating mode, in training mode, or through a hand-held or other device tied to the store's database.

d. Post, in a conspicuous place, the refund policy of such retail store in the event of an overcharge.

3. Test procedures and accuracy requirements. a. The commissioner shall, by regulation, adopt test procedures utilizing randomized sampling techniques. Such procedures shall be consistent with the examination procedure for price verification developed by the national conference on weights and measures and published in the national institute of standards and technology handbook one hundred thirty. For purposes of this section, pricing accuracy inspections shall, to the extent possible, be conducted at a time and in a manner that does not interrupt the normal flow of retail business at the retail store.

b. A retail store at least three hundred square feet in size shall be deemed in compliance if ninety-eight percent of the items in the sample selected are accurately priced. For purposes of this section retail stores that are less than three thousand square feet and employ a manual pricing system shall be deemed in compliance if, effective June first, two thousand seven through May thirty-first, two thousand eight, at least ninety-six percent of the items in the sample selected are accurately priced and beginning on June first, two thousand eight at least ninety-eight percent of the items in the sample selected are accurately priced.

c. In addition to establishing a standard frequency of inspection consistent with the provisions of paragraph a of this subdivision, the commissioner or a weights and measures official may conduct inspections of individual items in response to consumer complaints or as a follow-up on items ordered to be corrected in a previous inspection.

4. Enforcement procedures. a. The commissioner or a weights and measures official shall advise the operator of the retail store of any pricing error encountered in an inspection. If the correction cannot be made immediately, then, the commissioner or a weights and measures official shall issue a stop removal order for items subject to overcharges and such stock-keeping units shall be removed from sale until correction is made.

b. Upon finding a violation of this section, the commissioner or the municipal director of weights and measures may impose civil penalties as prescribed in section thirty-nine of this chapter. Such penalty shall not exceed three hundred dollars per violation for violations assessed during an initial inspection in a calendar year and shall not exceed six hundred dollars per violation for violations assessed in a second or subsequent inspection during a calendar year. In determining the amount of any civil penalty imposed, the magnitude of the errors, corrective action taken by the retail store, history of such prior conduct, or other relevant information shall be considered. Penalties may only be imposed for:

(1) Overcharges found in a sample selected using the procedures adopted pursuant to subdivision three of this section, when overcharges number more than two percent of the sample. Each such overcharge may be considered a separate violation provided, however, that any overcharge for a single stock-keeping unit that includes more than one item in such unit shall count as a single violation and not as separate violations for each item in the stock-keeping unit.

(2) A large overcharge found on an individual item.

(3) An overcharge verified in response to a consumer complaint.

(4) Overcharges found on follow-up inspections of items ordered corrected.

(5) Failure to disclose the retail price of a stock-keeping unit pursuant to paragraph a of subdivision two of this section.

(6) Failure to conspicuously post a refund policy pursuant to paragraph d of subdivision two of this section.

5. Local pricing laws. Nothing in this section shall be construed to prohibit a political subdivision of the state from continuing to implement and enforce any local pricing law or regulation in effect prior to the effective date of this section. Where a political subdivision has a local pricing law in effect prior to the effective date of this section, the provisions of this section shall have no force and effect until such time as the political subdivision repeals its local pricing law. Any political subdivision of the state not having any local pricing law or regulation in effect prior to the effective date of this section shall adopt and implement the pricing accuracy provisions set forth in this section or by regulations adopted pursuant to this section.

Credits

(Added L.2006, c. 665, § 2, eff. Sept. 13, 2006.)

McKinney's Agriculture and Markets Law § 197-b, NY AGRI & MKTS § 197-b
Current through L.2016, chapters 1 to 442.